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are very fully brought out in the opinion. The wonder is, perhaps, that, at this late day, any one should continue so old-fashioned in his views as to consider the father's right to his children's services in the light of property, which his creditors might treat as security for their claims. In the wonderful advance in the expense of living and the education of children, the father with a numerous family is regarded more in the nature of an incumbered debtor, than of one possessing large resources for future advancement. The demands for education have increased, at the very least, ten fold, within fifty years, and the expense of the same degree of culture has advanced almost in the same ratio. At a time when every town, or city high school, affords the means of acquiring almost the same extent of education which was afforded by the colleges at that time, we should scarcely expect children to find much time to labor for the benefit of the family.

The truth unquestionably is that any such claim, at any time, must have resulted from the narrowness of the means of support and education afforded by the country. How far we may now be travelling toward an opposite extreme we need not stop to inquire. It will be sufficient for the present purpose to be able to see clearly that there exists no reason for the claim, that parents have any pecuniary interest in the earnings of their children, which they may not gratuitously relinquish without infringing any rights of creditors, present or prospective. I. F. R.

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## *City Court of Louisville, Kentucky.*

### CITY OF LOUISVILLE *v.* JEFF. BROWN.

An Act of the Legislature authorizing the city of Louisville to compel every attorney practising therein to pay a license of ten dollars per annum, and subjecting them to a fine in case of refusal, is unconstitutional and void as to attorneys admitted to practice before the passage of the Act.

An attorney and counsellor at law is vested with an *official right* which cannot be trammelled in any way except for official and professional misconduct.

THIS case was submitted upon the following agreed facts: The defendant was licensed in 1843, to practise as an attorney and counsellor at law, in all the Courts of this commonwealth; and under and by the authority of such license was then sworn into office, and has been ever since, and is now, practising his said profession. It was further agreed, that he had not taken out any license from the Inspector of License in the city of Louisville.

The Legislature of Kentucky by an act, approved March 3d 1870, authorized the General Council, by ordinance, to require licenses of each attorney and counsellor at law, with adequate penalties for doing business without the required license. And the General Council, in pursuance thereto, passed an ordinance, "That each and every lawyer practising in the city of Louisville

shall pay a license of ten dollars per annum. Every person who, for fee or reward, shall prosecute or defend causes in any court of record or other judicial tribunal of the United States, or any of the states, or whose business it is to give legal advice in relation to any cause or matter whatever, shall be deemed to be a lawyer.

"Sec. 2. Any person violating any of the provisions of this ordinance, shall, for each offence, be fined not less than ten, nor more than twenty dollars." Approved April 10th 1870.

For defendant's failure to take out such license from the Inspector's office, this warrant was issued to impose the fine on him.

The opinion of the court was delivered by

GEO. W. JOHNSON, J. *pro tem.*—This court is now called upon to decide upon the constitutionality of the Act of the Legislature, styled the New City Charter, as well as the legality of the ordinance of the General Council, requiring lawyers "practising in the city of Louisville to take out additional license."

In doing this it will be necessary to review the duty and office of lawyer. That he is an officer of the court, and as much so as the judge, city attorney or clerk, and required to take the same kind of oath of office, it is only necessary to refer to the language of the law on the subject, and the form of the oath of office, as well to the attorney as to the other officers of the court. By the law, as it existed before the new constitution, as well as the oath prescribed therein to the officer, including the attorney at law, it is called an "oath of office," and the attorney, like other officers, is installed into office by the judgment of the court. He is required to procure license from the judges of the courts, who are liable to punishment if it is wrongfully granted, and the lawyer is liable to penalty if he should abuse his office. This license is his commission to exercise the functions of his office, and to shield the community against impostors who have not been adjudged to have the requisite qualifications.

The right of the Legislature and General Council of this city, to impose, *ex post facto*, additional license, is now to be determined. The Constitution of the United States says: "No state shall pass any bill of attainder, *ex post facto* law or law impairing the obligation of contracts." That the meaning of *ex post facto* applies to any penalty, whether pecuniary or other disability, it is only necessary to refer to the case of *Fletcher* v. *Peck*, 6 Cranch 137,

wherein Chief Justice MARSHALL defines it to be "one which renders an act punishable in a manner in which it was not punishable when it was committed." The same court says, in the case of *Cummings* v. *The State of Missouri*, 4 Wall. 329, in defining what is punishment, "The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending, and the causes of the deprivation determining this fact. Disqualification from the pursuit of a lawful profession or avocation or from the positions of trust or from the privilege of appearing in courts or acting as executor, administrator or guardian, may also and often has been imposed as punishment.

"The theory upon which our political institutions rest is, that all men have certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness, all avocations, all honors, all positions are alike open to every one, and that in the protection of these rights, all are equal before the law."

It is very evident the right to fill the office of lawyer, after one has been installed into office, complying with all the requirements of the constitution and laws made in pursuance, can not be questioned nor trammelled, either directly or collaterally, by additional licenses. The same court in the case of *Ex parte Garland*, 4 Wallace 378, says: "The profession of an attorney and counsellor at law is not like an office created by Act of Congress, which depends for its continuance, its powers and its emoluments upon the will of its creator, and the possession of which may be burdened with any conditions, not prohibited by the constitution. They are officers of the court, admitted as such by its order, upon the evidence of their possessing legal learning and fair private character. The order of admission is the judgment of the court, that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such, and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct, ascertained and declared by the judgment of the court, after opportunity to be heard has been afforded. Their admission or exclusion is not the exercise of a mere ministerial power. It is the exercise of a judicial power. The attorney and counsellor at law being by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace or

favor. The right which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence, revocable at the pleasure of a court or at the command of the Legislature. It is a right of which he can only be deprived by the *judgment of the court* for moral and professional delinquency."

It is not deemed necessary to cite other authorities to sustain the idea, that an attorney and counsellor at law is vested with an *official right*, which cannot be trammelled in any way except for official and professional misconduct.

It only remains to be seen whether the requirements of the Legislature, as expressed in said act and in said ordinance of the General Council, do so limit and burden *his said office* as to conflict with his vested right to use his said office under the constitution.

It will be noticed that this proceeding is to fine, and imprison in case the fine is not paid. It is a criminal proceeding, whose execution is imprisonment. It deprives defendant of his liberty, both of profession and person. The execution of the judgment against him for doing that which the constitution, the laws at the time he took his oath of office, the order and judgment of the court authorized him to do, by imprisonment, would certainly be a *punishment*, which the spirit of our laws does not authorize. No case could be conceived more clearly *ex post facto* than this, and more directly in conflict with the Constitution of the United States.

It cannot avail the plaintiff to say that this additional license is only a tax, when it is called by the Legislature, by the General Council and by the paper itself a *license*. A license is a leave, *liceo*, to give leave. Tax is from *taxo*, to burden. Two words of very different meaning. If the object of the Legislature had been to burden the lawyer with taxes for exercising the functions of his office, or to imprison him if he was unable to pay it, they certainly could have found language to express their meaning. But admitting that the object of this license from the inspector's office was to obtain revenue by taxes, and that taxes is what they mean, still this burden or punishment cannot escape the constitutional condemnation. The defendant was licensed, took the required oath and was installed into office by the judgment of the court in 1843, during good behavior. Any punishment—and the judgment of this court in favor of plaintiff certainly would be a pun-

ishment—cannot escape the constitution as *ex post facto*. If the office of lawyer is to be classed with trades, mechanics and merchants, who are not officers of the law, nor members of the judiciary nor courts, as has been intimated by the judges, still it would be *ex post facto*. A license is granted to any one of the trades, generally for one year, upon the payment of a certain sum. Certainly the law-making power could not increase the sum, nor require them to procure other licenses till the end of the year, or the expiration of their licenses; and any punishment imposed upon them for failing to procure other licenses before the expiration of those already granted them would be *ex post facto* and unconstitutional. Let the same rule be applied to defendant, and he cannot be punished for exercising the functions of his office during existence of his license, which is during good behavior, in other words, for life. But this court cannot see the propriety of classing the members and officers of the judiciary, licensed and sworn members of the courts of justice, with mechanics, merchants and tradesmen, who have no official capacity, take no oath of office, nor any order or judgment of a court recognising their position. There is no analogy between them, and the notion has no foundation in reason nor justice; and if such a mode of reasoning has to be resorted to before lawyers can be punished, it will be best to let lawyers go unpunished, that the judiciary may remain untrammelled, and the courts permitted to administer to suitors justice, "without sale, denial or delay."

The legality of the ordinance under the city charter is very questionable, if there was no doubt as to the propriety of the charter itself. The ordinance requires every lawyer, whether he may reside in Frankfort, Lexington, or anywhere else, to procure such license, or pay a fine, or go to prison in case he fails to pay the fine, before he can attend to any causes in the state or United States court, held at Louisville, in bankruptcy, or anything else, or give legal advice in relation to any cause whatever pending in Louisville. This embraces about every lawyer in the state. The city charter certainly authorizes no such ordinance. The city charter authorized "the General Council to require license of each attorney and counsellor at law." It certainly meant those residing and doing business in the city of Louisville. The ordinance applies to every lawyer practising in the city of Louisville in any court of record or other judicial tribunal of the United States or

any of the states. This court is of the opinion that the ordinance is not authorized by the Act of the Legislature. The United States attorney for the district of Kentucky, the commonwealth's attorney for this judicial district, and the attorney for the city of Louisville, all are lawyers practising law for fee and reward in the city, and are included in said ordinances, and for failure to obtain such license, are liable to fine and imprisonment for exercising the functions of their respective offices. To enforce this ordinance will clog the wheels of justice.

In the opinion of this court, both the Act of the Legislature and city ordinance are against the spirit of our institutions, and are unconstitutional, the enforcement of which would produce irreparable injury. Both the Legislature and General Council should review their action.

The warrant is dismissed.

## ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF KANSAS.[1]
COURT OF APPEALS OF MARYLAND.[2]
SUPREME COURT OF NEW YORK.[3]
SUPREME COURT OF PENNSYLVANIA.[4]
SUPREME COURT OF VERMONT.[5]

ACTION. See *Assignment; Broker.*

Under particular circumstances, a creditor of the estate of a deceased person may maintain an action to collect his debt from a debtor to the estate: *Fisher et al.* v. *Hubbell et al.*, 65 Barb.

*Distinction between Trespass and Account.*—A bill of particulars reading as follows:

"I. B. to L. T. S., to timber taken and received from the S. W. 8, T. 12, R. 22:—

| | |
|---|---|
| 400 cross ties of the value of 50 cts. each . . . . . | $200 00 |
| 3 sets of switch ties at the value of . . . . . | 100 00 |
| | $300 00" |

discloses an action on an account and not one for trespass on real estate: *Bernstine* v. *Smith*, 10 Kans.

[1] From W. C. Webb, Esq., Reporter; to appear in 10 Kans. Reports.
[2] From J. Shaaff Stockett, Esq., Reporter; to appear in 37 Md. Reports.
[3] From Hon. O. L. Barbour; to appear in vol. 65 of his Reports.
[4] From P. F. Smith, Esq., Reporter; to appear in 71 Pa. St. Reports.
[5] From J. W. Rowell, Esq., Reporter; to appear in 45 Vt. Reports.